

**Internal Revenue Service  
Director, Exempt Organizations**

**Department of the Treasury  
P.O. Box 2508  
Cincinnati, Ohio 45201**

Number: **201130007**  
Release Date: 7/29/2011

Employer Identification Number:

Date: May 3, 2011

Person to Contact - ID#:

Contact Telephone Numbers:  
Phone  
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UIL  
4942.03-07

**LEGEND**

B= State  
C= Syndrome  
D= Type of Group Home  
E= President of Applicant  
F = Date  
p= Dollar Amount  
q= Dollar Amount  
r= Dollar Amount

Dear :

By letter dated June 30, 2010, you requested a ruling that a set-aside in the amount of p for the taxable year ending June 30, 2010, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

**FACTS**

You are a corporation formed under the laws of the state of B, exempt from federal income tax under section 501(c)(3) of the Code, and classified as a private operating foundation under sections 509(a) and 4942(j)(3).

You have been formed to help persons suffering from C to live more fulfilling lives. You are establishing a residence program to provide on site, round-the-clock care to persons with this disorder. You are seeking to locate and acquire a suitable facility, and modify it to meet group home building codes. The facility is projected to cost q to purchase and r to modify.

Your search for a suitable facility has already occupied an extended period of time. You have determined the most desirable geographical area in which to establish your group home, but have not been able to locate a building that meets your very stringent requirements.

Furthermore, numerous knowledgeable parties, including representatives of the State of B's Department of Health Services, have advised you under no circumstances to acquire a home before you are licensed to operate one. You have initiated the process of obtaining a license from the State of B's Department of Human Services to become a D provider. However, in order for you to be licensed, your President, E, had to complete a training session which was not scheduled by the State of B until October of 2010. This, moreover, was only the first of a series of steps in the licensure process, including the completion of the application package, additional enrollment forms, pre-admission screening by the State, development of a contract with the State and demonstration of adequate training for personnel.

No additions to the set-aside for this project are contemplated.

### LAW

Section 4942(g)(1) of the Code defines "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that, for all taxable years beginning on or after January 1, 1975, an amount set aside for a specific project within one or more purposes of section 170(c)(2)(B) may be treated as a qualifying distribution if the amount meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary the amount set aside will be paid for the specific project within five years, and the specific project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(a)(2)(iii) defines as a qualifying distribution any amount set aside within the meaning of paragraph (b) of section 3.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Tax Regulations provides that the amounts of income set aside for a specific project for one or more of the purposes in section 170(c)(1) or 170(c)(2)(B) of the Code may be treated as qualifying distributions for the tax year(s) in which such amounts are set aside (but not in the tax year in which actually paid) if the requirements of section 4942(g)(2) and paragraph (b) are satisfied. The requirements of paragraph (b) are satisfied if the foundation establishes to the satisfaction of the Commissioner the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test for a set-aside is met if the foundation establishes the specific project is one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments, or where grants are made as part of a matching-grant program. Specific projects that can be better accomplished by the use of a set-aside include projects in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects, such as a plan to erect a building to house the direct charitable, educational, or other similar exempt activity of the private foundation.

Section 53.4942(a)-3(b)(7)(i) provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

### ANALYSIS

You have sought timely approval of your set-aside of income in accordance with Section 53.4942(a)-3(b)(7)(i).

As required by Section 4942(g)(2)(A) of the Code and Section 53.4942(a)-3(b)(1) of the Regulations, your proposed set-aside will be used to accomplish purposes described in section 170(c)(2)(B) of the Code, namely, the relief of the distressed.

The specific project for which funds have been set aside is the acquisition and modification of a residential facility for the care of persons suffering from C.

You have credibly represented that the amount set-aside for this specific project will be paid out within 60 months from the set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Your project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds. In the language used by section 53.4942(a)-3(b)(2) of the regulations, your specific project is "one in which relatively long-term ... expenditures must be made, such as a plan to erect a building to house the direct charitable, educational, or other similar exempt activity of the private foundation." The project requires long term expenditures, because the preliminary stages of the project, including the location of a suitable property and the completion of the licensure process, entailed insignificant expenditures, while the major outlays for the purchase and modification of a facility had to be postponed to a later fiscal year.

Your project therefore satisfies the suitability test as set forth in Section 4942(g)(2)(B)(i) of the Code and Section 53.4942(a)-3(b)(2) of the Regulations.

### RULING

Based on the foregoing, the set-aside of p for the taxable year ending June 30, 2010, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

We direct your attention to Section 53.4942(a)-3(b)(8) of the regulations, entitled "Evidence of Set-Aside." This section provides that any set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount in the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, the amount of the set-aside must be taken into account in determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1) of the regulations), and any income attributable to a set-aside must be taken into account in computing adjusted net income (see section 53.4942(a)-2(d) of the regulations).

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Internal Revenue Service. This ruling does not address the applicability of any section of Code or regulations to the facts submitted other than with respect to the sections described.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling letter is directed only to the organizations that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent. Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to the authorized representative.

Please keep a copy of this ruling letter in your permanent records.

If you have any questions about this ruling, please contact the persons whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Lois Lerner  
Director, Exempt Organizations

Enclosure:  
Notice 437  
Redacted Approval Letter